

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:07-CV-00739**

DAVID F. EVANS, *et al.*,

Plaintiffs,

v.

**THE CITY OF DURHAM,
NORTH CAROLINA, *et al.*,**

Defendants.

**DEFENDANT CITY OF DURHAM'S
MOTION FOR JUDGMENT
ON THE PLEADINGS**

NOW COMES Defendant the City of Durham, North Carolina (the "City"), herein by and through its attorneys, and pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, moves the Court for judgment on the pleadings, as to Count Twenty-Three appearing at paragraphs 567-71 of Plaintiffs' Second Amended Complaint (Doc. 116), on the same grounds set forth in Defendant Mark Gottlieb and Benjamin Himan's Motion for Judgment on the Pleadings (Doc. 213) and accompanying Memorandum in Support of Defendant Mark Gottlieb and Benjamin Himan's Motion for Judgment on the Pleadings (Doc. 214).

IN SUPPORT WHEREOF, the City respectfully shows the Court that the pleadings have closed and that the grounds upon which Defendants Mark Gottlieb and Benjamin Himan rely in support of their motion for judgment on the pleadings with respect to the malicious prosecution claim asserted against them, which claim is set forth

in Count Thirteen, appearing at paragraphs 486-97 of Plaintiffs' Second Amended Complaint, apply to the claim Plaintiffs assert against the City in Count Twenty-Three (paragraphs 567-71) of Plaintiffs' Second Amended Complaint, given that the factual bases for Counts Thirteen and Twenty-Three are stated by Plaintiffs to be the same. Because Count Twenty-Three is the sole remaining claim Plaintiffs assert against the City, this action should be dismissed in its entirety as to the City.

WHEREFORE, Defendant the City of Durham, North Carolina, prays that the Court grant judgment on the pleadings in favor of the City, dismissing this action in its entirety as to the City, and that the Court grant the City such other and further relief as is just and proper.

Respectfully submitted, this the 24th day of March, 2014.

WILSON & RATLEDGE, PLLC

OFFICE OF THE CITY ATTORNEY, CITY
OF DURHAM, NORTH CAROLINA

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CERTIFICATE OF ELECTRONIC FILING AND SERVICE

The undersigned hereby certifies that, pursuant to Rule 5 of the Federal Rules of Civil Procedure and LR5.3 and LR5.4, MDNC, the foregoing pleading, motion, affidavit, notice, or other document/paper has been electronically filed with the Clerk of Court using the CM/ECF system, which system will automatically generate and send a Notice of Electronic Filing (NEF) to the undersigned filing user and registered users of record, and that the Court's electronic records show that each party to this action is represented by at least one registered user of record (or that the party is a registered user of record), to each of whom the NEF will be transmitted.

This the 24th day of March, 2014.

WILSON & RATLEDGE, PLLC

By: /s/ Reginald B. Gillespie, Jr.
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